

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 959 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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KAVJIBHAI DHARMAJI NINAMA

Versus

MADHOBHAI KUBERBHAI KHARADI

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Appearance:

MR DIPAK R DAVE for Petitioner

MR RN JADEJA for Respondent No. 1

Mr. P.K.Shukla, ASSTT. GOVERNMENT PLEADER for  
Respondent No. 6

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/07/1999

ORAL JUDGEMENT

This Revision Application has been filed for quashing the order dated 22nd February, 1995 passed below exh. 5 in Regular Civil Suit No. 22 of 1994 by the learned Civil Judge (S.D.), Himmatnagar and the judgment and order dated 18th November, 1997 passed by

the Joint District Judge, Sabarkantha at Himmatnagar in Civil Appeal From Order no. 22 of 1995.

2. Heard the learned counsel for the parties. The applicant has been granted the land on lease bearing survey no. 8/1 admeasuring 0.10 hectares for excavation of granite stones for the period of 10 years from 6th October, 1992. The respondents started harassing and obstructing the applicant and have not allowed the applicant to do his business. Hence the applicant filed Regular Civil Suit No. 24 of 1994 in the Court of the Civil Judge (S.D.) Himmatnagar for a permanent injunction against the respondents. The applicant also filed an application exh. 5 for temporary injunction and that application was rejected by the order dated 22.2.1995. Being aggrieved by the order of the trial court, the applicant preferred Civil Appeal from order no.22 of 1995 before the District Court. The Learned Joint District Judge has rejected the appeal on 18th November, 1997 and therefore, the applicant-original plaintiff has filed this Revision Application before this Court.

3. The learned counsel for the applicant submitted that the trial court has come to the conclusion that the applicant-plaintiff has entered into an agreement with the Collector for excavation of mines from the lease land, but the trial court has committed an error in rejecting the application of the applicant on the ground that the plaintiff has not produced any possession receipt from the competent authority regarding handing over the suit land to the applicant-plaintiff and that the applicant was the President of Khalvad Gram Vibhag Mandli and his resignation was accepted on 27th October, 1991. From the panchnama regardsing the suit land, it appears that the work of excavation in the suit land has not been started. As such, according to the trial court, the applicant has failed to prove the work of digging mines from the suit land. The learned advocate for the applicant submitted that it is not disputed that the land in question has been leased out to the applicant and the lease deed mark 4/2, order of the Collector and the agreement executed by the plaintiff with the Collector is at mark 4/3. The Collector has also served a notice mark 4/4 to the petitioner for payment of stamp fees. Thus, it is not in dispute that the lease deed was executed in favour of the applicant by the Collector regarding the suit land. The lower appellate court has dismissed the appeal merely on the ground that there is no panchnama from which it is established that the plaintiff is in possession of the

suit land and the plaintiff has not filed any application for preparing a panchnama. The learned counsel for the applicant-original plaintiff also pointed out that whenever the applicant starts his business, the respondents do not permit him to continue his business. In case there was any difficulty for the courts below, they could have directed to Collectot to demarcate the land which has been leased out to the applicant. According to him, the courts below have committed a manifest error on the face of the record in exercising the jurisdiction which is not vested in them.

4. On the other hand, the learned counsel for the respondent contended that the lease granted to the applicant is illegal and cannot be enforced in view of the fact that the applicant is a President of the Mandal exercising his power and got the lease deed executed in his favour.

5. I have carefully considered the submissions made on behalf of the parties. It appears that both the courts below have refused the relief to the applicant merely on the ground that the applicant could not locate the exact land which has been allotted to him. In case the courts below were not in a position to locate the portion of the land which was leased out to the applicant, they could have directed the Collector to locate that piece of land which was allotted to him for excavation. Even if we assume that the lease deed is illegal, that could not be interfered with by the respondents unless that lease deed is declared illegal by any court of law. In the present case, the lease granted to the applicant has not been declared illegal or contrary to law by any competent court of law and hence, it remains in force and that should not be interfered with by any person either by a public person or by a private party.

The learned counsel for the respondents could not point out anything to show that the applicant has no right to dig mines of the land which has been allotted to the applicant. As such, the respondents have no right in law to interfere with the possession of the suit land of the applicants.

5. In view of the above facts and circumstances, I hold that the orders passed by both the courts below are erroneous and are not sustainable in the eye of law. Accordingly, this Revision Application deserves to be allowed.

6. Accordingly, this Revision Application is allowed. The order dated 22.2.95 passed below exh. 5 in Regular Civil Suit no.22 of 1994 by the learned Civil Judge (S.D.) and the judgment dated 18.11.1997 passed in C.A.F.O. no.22 of 1995 by the learned Joint District Judge, Sabarkantha at Himmatnagar are quashed and set aside. However, the applicant is directed to approach the court concerned or the Collector concerned for demarcation of the land in question, in case of need and the court below or the Collector, Sabarkantha at Himmatnagar is at liberty to pass appropriate orders restraining the respondents from interfering with the possession and business of the petitioner on the land in question which has been leased out to the applicant by the Collector. The Registry is directed to forward a copy of this judgment to the Collector, Sabarkantha at Himmatnagar within two weeks from today.

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